

# CIVIL PROCEDURE 101

FACULTY:  
Hon. Bryan Levy (*retired*)  
Most recently served in the  
46<sup>th</sup> District Court



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## GOALS FOR THE MORNING



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## WHAT IS A CIVIL CASE?

Generally, a civil case is filed because of a disagreement between two people, businesses or organizations. The disagreement usually involves one person believing that he or she has been hurt, had their rights violated or property damaged by another person. A civil case is not a criminal case.

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## CASEFLOW OUTLINE: Step #1

### *Summons and Complaint filed with the court*



- ✓ Clerk endorses with date of filing and assigns case number.
- ✓ Clerk receipts filing fees. If case received as a change of venue, filing fees are required from party requesting change or from court.
- ✓ Summons issued for service. Summons must be sealed and include the name of the court clerk, the date on which the summons was issued, and the last date on which the summons is valid.
- ✓ Clerk assigns a case number with current year prefix and case type code.

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## STEP # 2: & 3

### *Answer and Jury Demand*



#### STEP # 2: Answer

Defendant must serve and file an answer within 21 days of service.

#### STEP # 3: Jury Demand

Jury Demand is required in writing within 28 days after filing of answer or timely reply. Fee must be paid at time of demand.

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## STEP # 4: *Scheduling*



- ✓ Attorneys and parties must be given 28 days after filing of answer or timely reply. Fee must be paid at time of demand.
- ✓ Filing an appearance without taking any other action entitles a party to receive copies of all pleadings and papers but in all other respects the party is treated as if the appearance had not been filed.

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### STEP # 5:

#### Entry of Judgment

- ✓ All judgments and orders must be in writing, signed, and dated.
- ✓ The clerk shall keep the original of every final judgment, written opinion, finding, or order.
- ✓ The party securing the judgment must serve a copy on all other parties within 7 days after it was signed and file proof of service with the court clerk.

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### STEP #5:

#### Entry of Judgment *(continued)*

- ✓ Count closed:
  - Judgment after Bench Trial –
  - If settlement reached prior to conclusion of the trial –
  - Judgment after Jury Trial –
  - If settlement reached prior to conclusion of the trial
  - Consent Judgments –
  - Change of Venue –

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### STEP # 6:

#### Default

- ✓ The clerk must enter a default against a party who has failed to plead or otherwise defend. The clerk must send notice to all parties who have appeared and to the defaulted party.
- ✓ Notice of default entry must be served at least 7 days before entry of the judgment.
- ✓ If Default Judgment filed, count closed. If no default Judgment is filed the case remains open until further action for Dismissal for Lack of Progress.

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**STEP # 7:**  
***Dismissal for No Service***



Shall be entered by the clerk for each defendant who has not been served within 91 days of issuance of the summons or by the expiration date of the extended summons. Notice of dismissal to the plaintiff is required.

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**STEP # 8:**  
***Dismissal for Lack of Progress***



- ✓ The court may notify parties in actions in which no steps or proceedings appear to have been taken within 91 days that the action will be dismissed.
- ✓ If a party does not make the required showing, the court may direct the clerk to dismiss the action for lack of progress. Dismissal is without prejudice unless otherwise specified.
- ✓ Clerk mails dismissal notice to parties.
- ✓ Count closed.

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**STEP # 9:**  
***Garnishment after Judgment***



- ✓ Garnishment or other execution on a judgment for enforcement may not be issued until the expiration of 21 days after entry.
- ✓ A Writ of Garnishment must be accompanied by the appropriate filing fee along with receipting.
- ✓ The writ is issued by the clerk and shall include a directive regarding payment of obligation to either the plaintiff or the court.

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### STEP # 10: *Satisfaction of Judgment*



When payment is made to the court, or an order entered, or a Satisfaction of Judgment filed with the court, the clerk must indicate in the court records that judgment is satisfied in whole or in part.

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### STEP # 11: *Appeal*



- ✓ An appeal bond is required, payable in the District Court and held in the trust account until completion of appeal.
- ✓ Must file claim of appeal in Circuit Court with copy to District Court.
- ✓ Must follow all other steps as required by court rule and outlined in Claim of Appeal Worksheet .
- ✓ Clerk must complete Order of Transmittal / Certification of Records and attach all required documents for transmittal of file to Circuit Court accompanied by a copy of Bond on Appeal.

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### STEP # 12: *Bankruptcy*



Place an Administrative Closure on the case. This closure is not reported on the Caseload Activity Report, and the file remains in the ending-pending figures as an open case. For case age, computation in meeting Time Guidelines for Case Processing pursuant to Supreme Court Administrative Order 1991-4, the amount of time during which a case is inactive due to bankruptcy should be subtracted from the age of case both when reporting it as a pending case and at disposition.

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## DIRECT vs. INDIRECT ENFORCEMENT



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## DIRECT ENFORCEMENT:

### *Execution*



#### Execution – MCLA 600.6001-6070

1. Time = 21 days after entry of judgment
2. Return = not less than 20 nor more than 90
3. Property = all of the debtors
  - a. Personal property first
  - b. Time for sale

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## DIRECT ENFORCEMENT:

### *Garnishment*



1. Time = 21 days after entry of judgment
2. Procedure = Summary of major changes to MCR 3.101

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## DIRECT ENFORCEMENT:

### *Garnishment* (continued)



#### Courts

- a. Courts shall determine and order if funds are to be paid directly to the plaintiff or to the court.
- b. If funds are deposited with the court, they shall be released upon receipt according to a court's financial procedures.
- c. Motions to Pay are eliminated.

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## DIRECT ENFORCEMENT:

### *Garnishment* (continued)



#### Courts (continued)

- d. Orders to Pay are incorporated in the Writ of Garnishment.
- e. Only one disclosure is required.
- f. Initial and Subsequent Disclosures have been eliminated.

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## DIRECT ENFORCEMENT:

### *Garnishment* (continued)



#### Courts (continued)

- g. Courts will receive a final report on the total amount withheld pursuant to the writ. This will allow courts to maintain a more accurate record of payments for monitoring purposes and will provide more complete and accurate case information.
- h. Dissolution is eliminated except in cases involving property other than money.

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## DIRECT ENFORCEMENT:

### *Garnishment* (continued)



#### Courts (continued)

- i. Courts are now required to notify all parties if objections are filed within 7 days, hold the hearing within 21 days and notify all parties of the courts decision.

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## DIRECT ENFORCEMENT:

### *Plaintiffs*



Plaintiffs are no longer required to file a motion and order to pay.

Plaintiffs are no longer required to serve the defendant if the garnishee is the state.

Plaintiffs can maintain a more accurate balance because they will receive information each time funds are withheld.

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## DIRECT ENFORCEMENT:

### *Plaintiffs* (continued)



Plaintiffs will receive funds in a more timely manner because the process has been simplified. Garnishees no longer have the option to hold funds until the expiration of the writ.

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## DIRECT ENFORCEMENT: *Garnishees*



*Garnishees no longer have the option to hold funds until expiration of the writ.*

Disclosures no longer have to be notarized.  
The time to file disclosures has been increased from 7-14 days.

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## DIRECT ENFORCEMENT: *Garnishees* (continued)



Garnishee is no longer required to file subsequent disclosures for every pay period, whether indebted or not.

Garnishees is no longer required to file amended disclosures.

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## DIRECT ENFORCEMENT: *Garnishees* (continued)



Each time a periodic payment is withheld, the garnishee must provide the information on the case name, case number, amount withheld, balance and date to the plaintiff and defendant. This information shall also be provided to the court only if funds are sent to the court.

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## DIRECT ENFORCEMENT: *Garnishees*



For periodic garnishments only, garnishees are required to file a final statement of the total amount paid on the writ within 14 days after the writ expires or the garnishee is no longer obligated.

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## DIRECT ENFORCEMENT: *Garnishees* (continued)



New procedures have been developed for withholding which should greatly reduce the pro-ratio and generation of manual checks.

Garnishees are now only liable for the amount of the unpaid judgment, interest, and costs.

The State is now subject to the same procedures for periodic and non-periodic garnishments as other garnishees.

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## DIRECT ENFORCEMENT: *Defendants*



Each time funds are withheld, the defendant will receive a statement with information on the case name, case number, the date and amount withheld and the balance on the writ.

Defendant will receive a final report of the total amount withheld pursuant to the writ.

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## DIRECT ENFORCEMENT:

*What does this mean for you?*



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## INDIRECT ENFORCEMENT:

*Supplemental Proceeding*



- ✓ Any time until judgment is satisfied, need not wait 21 days
- ✓ Discovery
- ✓ Enjoin transfers
- ✓ Order satisfactions from specific property
- ✓ Appoint a receiver

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## INDIRECT ENFORCEMENT:

*Supplemental Proceeding*  
(continued)



- ✓ Make any other order appropriate to collect the judgment
- ✓ Require installment payment (*not same as petition by debtor to avoid wage garnishment*)
- ✓ Issue subpoenas to 3<sup>rd</sup> parties who may have possession of debtors property.

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## INDIRECT ENFORCEMENT:

### *Supplemental Proceeding*

(continued)

- ✓ Determine the ownership of property in hands of a 3<sup>rd</sup> party.
- ✓ Presumption of fraudulent transfer to wire within one year of creditors law suit.

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## INDIRECT ENFORCEMENT:

### *Special Circumstances*

#### A. Auto accident

#### B. Civil arrest

1. After judgment
  - a. Debtor fraudulently conceals property
  - b. Unjustly refuses to apply property to judgment
  - c. Debtor is about to remove property from jurisdiction with intent to defraud
  - d. Debtor is about to dispose of property to defraud

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## INDIRECT ENFORCEMENT:

### *Special Circumstances*

#### Civil arrest (continued)

2. Execution must be returned unsatisfied
3. Any person who removes his property to avoid levy or who assigns or secretes with intent to defraud, and those who receive with such intent are guilty of a misdemeanor.

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## INDIRECT ENFORCEMENT: *Special Circumstances*



- C. Collection of judgment against cities.
- D. Collection of judgment against school.
  - 1. May not seize property of political subdivision of state by execution.
  - 2. May not garnishee

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## SMALL CLAIMS MINI AND *INTENTIONAL TORTS*



### Small Claims Mini-Tort -

**Person liable for non-economic loss caused by their use or ownership of motor vehicle if the injured person suffered death, serious impairment or serious disfigurement.**

#### Tort Liability -

Damages up to \$400 for motor vehicles provided damages not covered by insurance.

#### Location of Action -

Actions for \$400 mini-tort should be brought in small claims court.

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## SMALL CLAIMS MINI AND *INTENTIONAL TORTS*



### Small Claims Intentional Tort -

Actions that **CAN'T** be bought include fraud, libel, slander, assault, battery or other intentional torts and actions against a state or governmental agency.

Actions that **CAN** be bought include bad checks and actions against or by a city or village except if immunity is defense.

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## JUDGMENT BY DEFAULT

### FAILURE TO PLEAD



#### Default for Failure to Plead or otherwise Defend

If a party has failed to plead or otherwise defend as demonstrated by affidavit or otherwise, the clerk must enter the default of that party.

Once the default has been entered, that party may not proceed until the default has been set aside.

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## JUDGMENT BY DEFAULT

### NOTICE OF REQUEST



#### Default Judgment

Party seeking default judgment must give notice to defaulted party if:

- a. Defaulted party has appeared in the action;
- b. Request for entry of default seeks relief different in kind from, or greater in amount than, that stated in the pleadings; or
- c. If the pleadings do not state a specific amount demanded.

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## JUDGMENT BY DEFAULT

### ENTRY OF DEFAULT JUDGMENT



#### Default Judgment

**By Clerk** – Clerk may sign and enter judgment on request of plaintiff, supported by an affidavit as to the amount due if:

- I. Claim is for a sum certain; and
- II. Defendant failed to appear; and
- III. Defendant is not an infant or incompetent.

**By Court** – In all other cases, the party entitled to a default judgment must apply to the court for judgment.

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## JUDGMENT BY DEFAULT NOTICE OF ENTRY OF JUDGMENT

### Default Judgment

Clerk must promptly mail notice of entry of a default judgment to all parties. The notice to the defendant shall be mailed to the defendant's last known address or the address of the place of service. The clerk must keep a record that notice was given.

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## SMALL CLAIMS CASES

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## SMALL CLAIM CASES: *Affidavit and Claim*

Affidavit and Claim  
filed with the  
court.

Must be in a form  
substantially  
equivalent to  
DC-87

- Clerk endorses with date and assigns case number
- Clerk receipts filing fees.
- No more than 5 claims by a person in a week.
- Count opened
- Clerk assigns case number w/ current year prefix and case type code

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## SMALL CLAIM CASES:

### *Clerk Shall...*



- Inform plaintiff and defendant that evening and Saturday court hours may be available upon written request and need shown.
- Serve by certified mail with return receipt requested, deliverable to the addressee only.
- Show proof of service by the receipt of mailing together with the signed return card.

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## SMALL CLAIM CASES:

### *Hearing Date*



Hearing date shall not be less than 15 days nor more than 45 days after the date of notice.

If affidavit is not served at least 7 days before the appearance date the plaintiff may request a new date not less than 15 days nor more than 30 days after the date of issuance of new notice.

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## SMALL CLAIM CASES:

### *Dismissal No Service*



- ❖ Dismissal No Service shall be entered by the clerk for each defendant who has not been served within 91 days of issuance of the summons or by the expiration date of an extended summons.
- ❖ Notice of dismissal to the plaintiff is required
- ❖ Count closed.

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## SMALL CLAIM CASES:

### *Request to General Civil*



- ❖ If either the plaintiff or defendant request the case be removed to the general civil division, the clerk shall close the small claims case and open a general civil case.
- ❖ The clerk mails a copy of the removal order to each party.
- ❖ Once removed the rules for general civil cases apply with an answer required 14 days after the date of order of removal.

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## SMALL CLAIM CASES:

### *Request to General Civil*



- ❖ Count closed under Small Claims.
- ❖ Count General Civil case opened.
- ❖ **NOTE:** An attorney may prepare and file the form for removal of an action in small claims to general civil.

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## SMALL CLAIM CASES:

### *Settlements*



Settlement agreements shall be in writing, signed by both parties, and reviewed by the judge, who may enter it as a judgment or require a hearing.

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## SMALL CLAIM CASES:

### *Judgment*



The clerk shall keep the original of every final judgment, written opinion, finding or order.

The court must mail or deliver a copy of the judgment to the parties.

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## SMALL CLAIM CASES:

### *Judgment*



#### Count case closed:

- ☐ Judgment after trial
- ☐ Consent Judgment
- ☐ Default judgment
- ☐ Dismissal before trial
- ☐ Change of venue

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## SMALL CLAIM CASES:

### *Dismissal No Progress*



The court may notify parties in actions in which no steps or proceedings appear to have been taken within 91 days that the action will be dismissed.

If a party does not make the required showing, the court may direct the clerk to dismiss the action for lack of progress.

Dismissal is without prejudice unless otherwise specified.

Copies of Order of Dismissal mailed to all parties.  
Count case closed.

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## SMALL CLAIM CASES:

### *Unsatisfied Judgment*



If judgment not satisfied within 21 days,  
defendant must disclose to the court and  
plaintiff - place of employment and  
location of accounts.

A Writ of Garnishment may not be issued  
until 21 days after the judgment is entered.

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## SMALL CLAIM CASES:

### *Satisfaction of Judgment*



When payment is made to the court,  
or an order entered, or a  
Satisfaction of Judgment filed with  
the court, the clerk must indicate in  
the court records that judgment is  
satisfied in whole or in part.

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## SMALL CLAIM CASES:

### *Appeal*



Attorney Magistrate Small Claims Judgment:  
Must be taken within 7 days after entry of  
decision of the magistrate. Clerk shall  
schedule a new hearing before the judge.

No appeal from a judge's decision is allowed.

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## SMALL CLAIM CASES: *Garnishment*



Garnishment following general civil guidelines. An attorney may not file garnishment proceedings on small claims judgments.

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## SMALL CLAIM CASES: *Bankruptcy*



Bankruptcy follows general civil guidelines.

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## LAND TENANCY & LAND CONTRACT



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## LAND TENANCY

### *Summons & Complaint*



-  Clerk endorses with date of filing and assigns a case number.
-  Clerk receipts filing fees.
-  Count case opened.
-  Clerk assigns a case number with current prefix and case type code.

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## LAND TENANCY

### *Summons Issued For Service*



Hearing date on Land Contract Forfeitures must be within 15 days, with service not less than 10 days before hearing date.

OR

Local Court rule exists, appearance within 10 days after service and hearing within 7 days of appearance.

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## LAND TENANCY

### *Summons Issued For Service*



Hearing date on all other proceedings must be within 10 days, with service not less than 3 days before hearing date.

OR

If Local Court Rules exists, appearance within 5 days after service and hearing within 7 days of appearance.

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## LAND TENANCY *Service*



### Tenancy:

 By ordinary mail  
AND one of several  
other methods

### Land Contract:

 Same as  
General Civil

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## LAND TENANCY *Dismissal No Service*



Shall be entered by the clerk for each  
defendant who has not been  
served within 91 days of issuance  
of the summons or by the  
expiration date of an extended  
summons. Notice of dismissal to  
the plaintiff is required.  
*Count case closed.*

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## LAND TENANCY *Proceeding*



Must be heard within 7 days  
after defendant's  
appearance or trial date. No  
adjournment beyond that  
unless stipulated by parties  
in writing or on the record.

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## LAND TENANCY

### *Appearance and Answer*



Appearance and answer; in writing or orally at hearing:

If Local Court Rule exists regarding issuance of summons for service - appearance by written answer may be required, with no date of hearing set until answer received, at which time hearing is scheduled to be heard within 7 days.

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## LAND TENANCY

### *Jury Demand*



Jury demand by defendant must be included in first response accompanied by jury trial fee.

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## LAND TENANCY

### *Default*



- Default occurs if Defendant fails to answer within 14 days (or according to Local Court Rule) or appear at hearing.
- The clerk must mail the default entry to the defendant, holding default judgment for 7 days before entry.
  - Tenancy MCR 4.201(F)
  - Land Contract MCR 4.202(H)
  - Count closed

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## LAND TENANCY

### *Adjournment*



If hearing is adjourned because a party fails to appear, the hearing may be adjourned for up to 7 days. The court must mail notice of the new date to the party who failed to appear.

- Tenancy MCR 4.201(F)
- Land Contract MCR 4.202(H)
- Trial Fee [MCL 600.5757(3)]

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## LAND TENANCY:

### *Dismissal No Progress*



- 📁 The court may notify parties in actions in which no steps or proceedings appear to have been taken within 91 days that the action will be dismissed.
- 📁 If the party does not make the required showing, the court may direct the clerk to dismiss the action for lack of progress.
- 📁 Order of Dismissal mailed to all parties by clerk.
- 📁 Count closed.

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## LAND TENANCY:

### *Judgment*



- Clerk shall keep the original of every final judgment, written opinion, finding or order.
- The court must mail or deliver a copy of the judgment to the parties.
- Count case close:
  - Settlements prior to conclusion of trial
  - Judgment after Bench Trial
  - Judgment after Jury Trial
  - Consent judgment
  - Default judgment
  - Dismissals before trial
  - Change of venue

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## LAND TENANCY

### *Satisfaction of Judgment*



When payment is made to the court, or an order entered, or a Satisfaction of Judgment filed with the court, the clerk must indicate in the court records that judgment is satisfied in whole or in part.

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## LAND TENANCY:

### *Appeal*



- 📁 **Time:** Within 10 days after entry of judgment.
- 📁 **Tenancy:** MCR 4.201(n)
- 📁 **Land Contract** MCR 4.202(L)
- 📁 **Appeal bond is required, payable in the District Court and held in the trust account until completion of appeal.**
- 📁 **Claim of Appeal filed in Circuit Court with copy to District Court with filing fee required.**

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## LAND TENANCY:

### *Appeal*



- 📁 **Must follow all other steps as required by court rule and outlined in Claim of Appeal Worksheet.**
- 📁 **Clerk must complete Order of transmittal / Certification of Records and attach all required documents for transmittal to file to CC, accompanied by a copy of Bond on Appeal Form.**

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## LAND TENANCY: *Bankruptcy*



Follows  
General Civil  
Guidelines

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## Added Notes:



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